

# **EXHIBIT A**

## **PART 3**

1 drawing, but we don't know whether that's the  
2 drawing or not. The file has got a lot of  
3 confusion in it because people are furnishing  
4 things and then disclaiming later or, you know,  
5 making statements later that we just don't know.

6 And I don't criticize them for telling  
7 the truth. If they don't know, they should say  
8 they don't know, but no numbers were made up.

9 They are in our file. And if they are  
10 used inappropriately, it is because somebody has  
11 made a decision that, gee, they wouldn't have  
12 sent us a drawing unless that was the drawing  
13 that they sent out.

14 Q. If -- where are the facts, any facts  
15 that you have seen that indicate that the foot  
16 control that Tina Lindquist was using is the  
17 same one that was supplied with the press brake  
18 in '78?

19 A. I have no facts like that.

20 Q. Okay. I see what you are saying.

21 A. I told you all the elements that I have  
22 got.

23 Q. Who made the decision then if we don't  
24 know what model was supplied with the press

1 brake in '78, who made the decision that this  
2 reference to the 532 is incorrect? How can you  
3 determine it is incorrect if you don't know the  
4 right answer?

5 A. Well, I was under the impression that  
6 the -- that that model number refers to a unit  
7 that has no kick plate.

8 Q. And who told you this?

9 A. I am -- I think that is part of the  
10 discussions with Matt Ulmenstein.

11 Q. And Mr. Hartman, right?

12 A. I don't remember Hartman being involved  
13 in that.

14 Q. You don't remember Mr. Hartman being  
15 there?

16 A. No, not being involved in discussions  
17 of that kind.

18 Q. Okay. Well, who made -- how could  
19 there have been a decision made that the  
20 reference to the 532 was in error if no one  
21 knows what number actually accompanied the  
22 machine in '78?

23 A. It is very simple. If you take a look  
24 at the unit with the kick plate, and you look at

1 the catalogue, you can say, wait a minute, that  
2 number doesn't go along with the kick plate,  
3 that's not -- you know, in the series that has  
4 the kick plate in it.

5 Now, remember, Ulmenstein is the  
6 contact with Mr. Hartman. They talk all the  
7 time. I very seldom talk to Mr. Hartman.

8 Q. I understand.

9 A. When he comes to Chicago, you know, I  
10 talk to him, but he has been here twice.

11 Q. Do you know how the decision was made  
12 to reference the -- to change or at least to  
13 attempt to change this reference to the 532  
14 model as being supplied with the machine in  
15 1978?

16 A. I have no idea. I just know that  
17 the -- you know, when we issue a report like  
18 this, we make the statement, this report  
19 contains initial opinions, we reserve the right  
20 to amend this report in the face of further  
21 information.

22 That's what Ulmenstein is doing is he  
23 now feels that this is not accurate so he is  
24 going to make a change in that. It is a report

1 to Mr. Hartman. I have my own mistakes that I  
2 have made in the report.

3 Q. Did he tell you at all in addition to  
4 him referencing the 532 in error, what  
5 photographs he reviewed that he reported as  
6 being consistent with that model?

7 A. No.

8 Q. So I guess there are two errors that  
9 Mr. Ulmenstein is now claiming to make; is that  
10 right?

11 A. Well --

12 Q. Is that right?

13 A. I don't know what he is claiming to  
14 make. I only see over here he says that there  
15 is something in error and he is going to --  
16 obviously he wants to straighten that out.

17 Q. And you said -- is that his  
18 handwriting?

19 A. That's his handwriting.

20 Q. Do you know what was the catalyst for  
21 him putting that down, for making that reference  
22 to it being in error?

23 A. Don't know.

24 Q. Do you know when he did that?

1 A. I also don't know.

2 Q. If Heim sold the Model 532 as included  
3 throughout the report and that's the different  
4 model than the model that she was using, the  
5 511, the lawsuit has no basis; isn't that fair?

6 A. You are asking me a legal question and  
7 I can't answer that.

8 Q. Do you know of any reason why someone  
9 would hold a press brake manufacturer liable for  
10 supplying a defective -- excuse me, for  
11 supplying a foot control if that wasn't the foot  
12 control that was used --

13 MR. HARTMAN: I am going to object to that.

14 MR. ROBINSON: Would you let me finish the  
15 question.

16 MR. HARTMAN: I am sorry, I thought you were  
17 done. Go ahead.

18 BY MR. ROBINSON:

19 Q. Do you know -- would you testify if you  
20 knew that the Model 532 was sold with the press  
21 brake in 1978 and that --

22 A. Is the 532 the one with the -- without  
23 the kick plate?

24 Q. Without the kick plate, yes, sir. If

1     you knew that that was sold with the press brake  
2     in 1978, but that Tina Lindquist was using a  
3     different Model 511 foot control that came from  
4     some other entity, would you be testifying that  
5     Heim is liable?

6           A.     Absolutely. I would have -- I would be  
7     even stronger because, remember, I am not an  
8     attorney. I would have said, you sent out one  
9     that is the worst one that you could possibly  
10    have sent out. You don't even have the kick  
11    plate in there. And so I would have been even  
12    more upset than I am because, you know, I have  
13    already have assumed that you have got a more  
14    advanced safety model on the thing and then you  
15    need a -- you need an additional gate in the  
16    front which is what I am claiming.

17           But there -- this is a question of law,  
18    what is it that you have to do, you know, the --  
19    from my point of view as a technologist you put  
20    one -- you sent this thing out with a kick  
21    plate -- with a foot control that's even worse  
22    than the one that I have seen, I will be even  
23    more upset. So, I, of course, would testify and  
24    in some states I would be allowed to testify, in

1 other states I would not be allowed because you  
2 would make the lawsuit disappear. Completely  
3 legal questions that are outside of anything  
4 that ordinary people consider that make any  
5 sense.

6 Q. You have testified in a lot of cases.  
7 Do you know of any way that the Model 532, let's  
8 assume for purposes of this discussion that it  
9 was sold, the press brake was sold with the  
10 Model 532 --

11 A. All right.

12 Q. -- and that that does not contain a  
13 kick plate.

14 A. That is the one with no kick plate?

15 Q. Yes, sir.

16 A. Okay.

17 Q. And she was injured with a 511 with a  
18 kick plate supplied by somebody else.

19 A. Yes.

20 Q. Do you know of any way that the 532  
21 could have caused any injuries to Tina Lindquist  
22 if it wasn't in use?

23 A. If it wasn't in use?

24 Q. Yeah, if that wasn't what was being



1 used?

2 A. Sure, I do know.

3 Q. Go ahead, tell us.

4 A. It means that somebody that has looked  
5 at the machine could have said, gee, it is time  
6 to replace this, it is wearing out, and they --  
7 I am going to replace this switch and the --  
8 so they replace the switch with something that  
9 they think is either equivalent or better than  
10 the one they had before, but you haven't given  
11 them any example of here is the proper one to  
12 put on.

13 See, I would be upset because the  
14 manual should be showing you what is the proper  
15 switch to put on. This is a design defect case.  
16 And I don't care what, in fact, was supplied. I  
17 care what was designed. And then, you know, if  
18 something was changed later on, you should be  
19 able to look at a manual and say here is the one  
20 we want on there.

21 Q. This is a new opinion that we talked  
22 about preliminarily when we started, it is not  
23 contained in your report. Did you ever raise  
24 any issues with the manual in your report such

1 as --

2 A. No.

3 Q. -- you are now raising?

4 A. No, because I am not raising it now.

5 That's just not one.

6 Q. I thought I just heard you just raise  
7 an issue.

8 A. You are the one that brought it up. If  
9 you bring this thing up, I will tell you other  
10 problems that we have got.

11 MR. HARTMAN: And I am going to object to  
12 the argument -- I am going to object to  
13 Mr. Robinson's argumentative nature because  
14 he presented --

15 MR. ROBINSON: Just raise your objection.

16 MR. HARTMAN: Wait. I am going to raise it  
17 the way I want to it.

18 MR. ROBINSON: I understand. You are doing  
19 it.

20 MR. HARTMAN: I am going to object to  
21 Mr. Robinson being argumentative with this  
22 witness because he presented the witness with a  
23 hypothetical situation which is not one that the  
24 witness has studied before and then asked him to

1 opine on issues, and now he doesn't like what he  
2 has heard and he is saying it is new --

3 MR. ROBINSON: I do like what I heard, I do  
4 like what I heard just so you know.

5 MR. HARTMAN: The very reason for this  
6 witness giving testimony on issues as it relates  
7 to the manual and replacement parts is in  
8 response to the hypothetical that Mr. Robinson  
9 gave.

10 So go ahead, you can ask your  
11 questions.

12 MR. ROBINSON: Yes, please don't assume what  
13 I like and don't like, Mr. Hartman.

14 Did we mark this -- or can we mark this  
15 as Exhibit D please.

16 (Whereupon, Barnett Deposition  
17 Exhibit D was marked for  
18 identification.)

19 BY MR. ROBINSON:

20 Q. I think this may be the drawing that  
21 you were referring to earlier; is that right?

22 A. That is correct.

23 Q. And what is the original date of that  
24 drawing?

1 A. It says 7-9-74.

2 Q. And Heim's name I see is on that?

3 A. Yes.

4 Q. Do you know, have you ever seen  
5 anything like this before?

6 A. I don't think I understand the  
7 question.

8 Q. Have you ever seen a drawing or a  
9 document that's similar to this for a foot  
10 control?

11 A. I don't -- I don't see anything special  
12 about this drawing.

13 Q. What does that tell you?

14 A. I think they are trying to tell you  
15 that they are switching, they are changing from  
16 one model to another.

17 Q. And what model were they changing from  
18 and what model were they changing to?

19 A. It is a Model 532 which is the one  
20 without the plate and they are changing it to a  
21 511 which is the one that has this locking  
22 plate.

23 Q. When does that change occur according  
24 to that document?

1           A.    I am having a little trouble reading  
2    this change date on here. But it is in there.  
3    There is the box.

4           Q.    Do you understand that to be 1982?

5           A.    To tell you the truth it looks like  
6    1932.

7           Q.    Okay. Have you ever looked at that  
8    document before?

9           A.    I have. I mean mostly because it has  
10   been included in Answers to Interrogatories and  
11   things, but I have not studied this document.

12          Q.    Did you ever understand or has anyone  
13   ever explained to you that the people that were  
14   involved with the sale of this machine, the  
15   press brake in 1978 aren't around anymore, has  
16   anyone ever told you that?

17          A.    No.

18          Q.    Mr. Hartman hasn't told you that?

19          A.    No.

20          Q.    And that as a result of that Heim could  
21   produce documents that go back to 1974 that  
22   would suggest a certain model of press brake --  
23   excuse me, a certain model of foot control but  
24   without someone who was involved in the actual

1 sale telling which one actually went that there  
2 is just no way to confirm with certainty that  
3 the type of foot control that was sold, has  
4 anyone told you that?

5 A. No, they haven't, and that's pretty  
6 pathetic because, you know, one of the things  
7 that you do if you set up a proper, a proper  
8 system, you don't need human beings around to  
9 tell you. You leave a paper trail to tell you  
10 what's going on. You don't say, oh my God, Jake  
11 died and we don't have Jake around anymore.

12 Q. I understand you have a problem with  
13 the -- I guess the historical preservation of  
14 documents.

15 A. Right.

16 Q. I understand what you are saying.

17 A. But I am not here to criticize that.  
18 That's not what I am --

19 Q. It doesn't --

20 A. That's not my role as an expert  
21 witness.

22 Q. You have criticized it and that's okay.

23 A. Yeah, I have criticized it because you  
24 brought the thing up, but I certainly am not

1 going to be happy when I am teaching students  
2 this is exactly what you don't do.

3 Q. Yeah, and these are -- this is a side  
4 issue for purposes of this lawsuit --

5 A. Right.

6 Q. -- whether or not their historical  
7 information is up to your standards or to  
8 someone else's standards.

9 A. Right, and I would hold Heim, I am not  
10 here as an expert, you know, to criticize --

11 Q. On historical preservation?

12 A. -- right, I am -- you know, to  
13 criticize Heim on historical preservation of  
14 documents, that's not what I am here to do, and  
15 I won't do that in a courtroom.

16 Q. Can you foresee a situation -- well,  
17 first of all, do you know who made the decision  
18 regardless of what model of foot control or what  
19 manufacturer of foot control or what type of  
20 foot control was supplied in 1978, do you know  
21 who made that decision?

22 A. No, I don't.

23 Q. Do you know if it was HB Machinery, the  
24 distributor that purchased the press brake?

1 A. I have no idea.

2 Q. Do you know if it was Avco Lycoming,  
3 the end user of the press brake?

4 A. I have no information about that. I  
5 would like to think that Heim is the one that  
6 made the decision because they are the ones that  
7 should make the decision.

8 Q. You think -- is it your testimony that  
9 the manufacturer of a press brake is in a better  
10 position to choose the type of foot control for  
11 a general purpose I think is how you described a  
12 press brake than the employer that tools and  
13 dies the machine?

14 A. Well, I would put it this way, I would  
15 only add the word "should," he should be in a  
16 better position than his customers for deciding  
17 what is the best -- you know, the best selection  
18 of a foot control.

19 Q. Have you ever testified that it is the  
20 employer, the end user that is in the best  
21 position to choose the appropriate type of foot  
22 control?

23 A. There are -- there are certainly  
24 circumstances where you will have to change the



1 foot control depending on what you are doing,  
2 but what you send out originally, that should be  
3 a general purpose foot control. And that ought  
4 to be the designer of the machine that describes  
5 that.

6 Q. Sure. And you are saying that there  
7 could be a change in the use of that machine  
8 that would result in the end user being in a  
9 position to say we need to change that foot  
10 control similar to what you talked about earlier  
11 with now you may be perhaps having a repetitive  
12 type of motion, maybe you want to get rid of  
13 your gated foot control, is that all accurate?

14 A. That's all accurate. You might, for  
15 example, want to use a foot control as an  
16 emergency stop device in which case you have to  
17 take all of the guards off of it.

18 Q. Do you know in this situation, in this  
19 sale, if the end user Avco Lycoming or the  
20 distributor was in a better position than Heim  
21 to know what the most appropriate foot control  
22 was?

23 A. They are not in the best position to  
24 know what the most appropriate foot control is

1 to send out with a general purpose machine. If  
2 they are now going to dedicate the machine --

3 Q. I mean for their use?

4 A. For their use, in dedicating their use,  
5 then they will be -- they may be in a better  
6 position because they know the circumstances in  
7 which it is going to be used.

8 Q. Yeah. And as you sit here today you  
9 don't know if that situation existed, that  
10 Avco Lycoming made the decision that they wanted  
11 to purchase whichever foot control they  
12 ultimately received by Heim?

13 A. I have no way of knowing this.

14 Q. Well, if Avco Lycoming told Heim to  
15 send them a 532, a 511 with antitrip with no  
16 gate, would you still fault Heim for sending  
17 them that?

18 A. Yes, I would.

19 Q. And tell the court why you would then  
20 fault them.

21 A. Because Heim has an obligation to put  
22 in their literature the characteristics of a  
23 foot control that will obey orders from  
24 operators. And by obeying -- by obeying orders

1 it means that the foot control must not allow  
2 the machine to work unless the operator tells it  
3 to work.

4 The foot control must work the machine  
5 when the operator tells it to work the machine.  
6 And so minimizing the probability of accidental  
7 activation is the responsibility of the designer  
8 of the machine.

9 And if he has 11 scenarios, each one of  
10 which would use a different footswitch, he  
11 should lay that out in his manual. If you have  
12 this circumstances, use one, this circumstances,  
13 use this one.

14 The -- but when he sends out a general  
15 purpose machine, he ought to go ahead and try to  
16 reflect what the industry wants is to minimize  
17 the probability of accidental activation.

18 Q. Do you know how many uses Avco Lycoming  
19 put to this press brake in the 20 plus years  
20 they used it without any reported injury?

21 A. No, and I also don't know their  
22 reporting system. I don't know how many  
23 injuries they really had.

24 Q. Do you know of any?

1           A.    I don't know of any, one way or the  
2    other.

3           Q.    Do you know of how many uses Corry made  
4    of this particular press brake?

5           A.    No, I don't.

6           Q.    Do you know if it were in the  
7    thousands?

8           A.    Don't know. I have no information.

9           Q.    Have you read the transcripts?

10          A.    I have.

11          Q.    And what number -- did you see any  
12   number as to the number of uses, different types  
13   of applications were used with this particular  
14   press brake?

15          A.    I don't recall the number being  
16   estimated.

17          Q.    Would you at least agree that the more  
18   uses and the more varying types of uses that an  
19   end user makes of a press brake, the more likely  
20   it would be that the end user would be in the  
21   best position to choose the appropriate foot  
22   control device?

23          A.    No, it has to be -- you have to be very  
24   specific that if you have a dedicated situation

1     that calls for a different footswitch, then  
2     since you know you have the input information,  
3     you know, of how you are going to use it, you  
4     should be able to go to the manufacturer's  
5     manual and say, here is my input information  
6     which I know better than you, Mr. Manufacturer,  
7     let me see what the appropriate foot control is  
8     for that situation.

9           Q.    Do you know if Avco Lycoming -- did you  
10    know that Avco Lycoming is the original  
11    purchaser of this machine?

12          A.    That's what I have read.

13          Q.    Do you know if they ever told -- did  
14    you know it was purchased through a distributor  
15    HB Machinery?

16          A.    Yes.

17          Q.    Have you ever dealt with HB Machinery?

18          A.    I don't think so.

19          Q.    Have you ever dealt with Avco Lycoming --

20          A.    It is possible that I have. I just  
21    don't remember.

22          Q.    Have you ever dealt with Avco Lycoming  
23    out in Connecticut?

24          A.    I don't know. I may have done some

1 product liability work for them at one time.

2 Q. Do you remember doing the product  
3 liability work for Avco?

4 A. Not really, but it is just not an  
5 unfamiliar name for me.

6 Q. Do you know if during that sales  
7 transaction if Heim was ever advised as to what  
8 types of uses Avco Lycoming was intending to use  
9 that press brake for?

10 A. No, but if they were, then the machine  
11 becomes a dedicated press brake, not a general  
12 purpose press brake.

13 Q. I understand that.

14 A. And once you know how it is going to be  
15 used, you have an obligation to put on exactly  
16 the safety devices that are required. And that  
17 is not just to stop with the foot control. If  
18 you know how it is going to be used, you should  
19 be doing a whole point of operation design, foot  
20 controls. Everything should be done by you.  
21 The -- so I am giving Heim the benefit of the  
22 doubt that this is a general purpose machine.

23 A general purpose machine, there is no  
24 way for Heim to know how it is going to be used

1 so they can't put on point of operation devices.

2 If I knew for one second that they had  
3 information how the thing was being used, my  
4 opinions would be different in this case as I  
5 would hold them totally responsible to do what  
6 the entire industry does, and that is design the  
7 exact point of operation devices for this  
8 machine because it is a dedicated machine and  
9 not a general purpose. But I don't believe for  
10 one second this discussion you and I are having,  
11 you know --

12 Q. What do you mean?

13 A. -- that this is not a general purpose  
14 machine. I don't believe -- I think it is a  
15 general purpose machine.

16 Q. Who said it is not?

17 A. Well, you gave from a hypothetical, you  
18 are talking about the mechanisms by which a  
19 machine no longer becomes a general purpose  
20 machine. It becomes dedicated. It is a big  
21 deal in our business.

22 Q. I hear what point you are making. I  
23 don't know where you got that from that anyone  
24 has suggested this was not a general purpose

1 machine.

2 MR. ROBINSON: Would you please mark this  
3 Exhibit E.

4 (Whereupon, Barnett Deposition  
5 Exhibit E was marked for  
6 identification.)

7 MR. ROBINSON: This is the safety brief.

8 MR. HARTMAN: Thank you, Paul.

9 BY MR. ROBINSON:

10 Q. Would you identify this for the record  
11 please absent my highlighting notations.

12 A. Yeah, this is -- this is a paper that I  
13 have written on, foot controls riding the pedal.

14 Q. I noted here on -- just on this issue  
15 that we are talking about you have a section  
16 entitled Conclusions?

17 A. Yes.

18 Q. And the Conclusion No. 9 indicates  
19 that -- by the way, did you write this?

20 A. Yes, I did. Did I have a coauthor on  
21 that? Let me see.

22 Q. It is reported as you only, but I don't  
23 know the answer to your question.

24 A. If my name is the only one on there, I

113



1 am the one that wrote it.

2 Q. Okay, and your name is the only name on  
3 there, so you are the only one that wrote it; is  
4 that accurate?

5 A. That is absolutely accurate.

6 Q. And you are welcome to use mine. I see  
7 you are looking there.

8 A. I want to see if I have a copy of it.

9 MR. HARTMAN: I can't read yours, Paul.

10 MR. ROBINSON: Yes, mine is a smaller copy.

11 THE WITNESS: Give me a second.

12 BY MR. ROBINSON:

13 Q. Sure. This is Volume 12, No. 4,  
14 July 1997; is that right?

15 A. Yes.

16 Q. Did you locate a copy?

17 A. I did.

18 Q. Okay. And I note on Conclusion No. 9  
19 you indicate, "The proper selection of a foot  
20 control is not straightforward."

21 A. Right.

22 Q. And is that a correct statement?

23 A. It is.

24 Q. And it then goes on to say, "It

1 involves many considerations;" is that an  
2 accurate statement?

3 A. Yes.

4 Q. "Including a knowledge of operator  
5 movement in the work space"?

6 A. Yes.

7 Q. Would the end user know what --  
8 operator movement in the work space?

9 A. Yes.

10 Q. Do you have any indication or any  
11 evidence to suggest that Heim ever knew of the  
12 operator movement in the work space?

13 A. Well, they know that the -- as a  
14 general purpose machine the -- generally what  
15 kind -- that you are going to have movement in  
16 the -- in the workplace.

17 Q. No, I mean in specifics of what was  
18 going to be done at Avco Lycoming.

19 A. Oh, no, that you are not going to know  
20 that, but this is written for -- this isn't  
21 written for press brakes. This is giving you  
22 information for any machine. And once you know  
23 it is a press brake and a general purpose press  
24 brake, you know a lot about what you have to

1 know to make a selection.

2 Q. It then goes on to say you need to have  
3 knowledge of steadiness requirements for part  
4 insertion.

5 A. Yes.

6 Q. That would be something that is known  
7 by the end user also?

8 A. Yes.

9 Q. Avco. Do you have any information to  
10 suggest that Heim ever knew of the steadiness  
11 requirements for part insertion?

12 A. I have no information.

13 Q. And then it indicates, "Another  
14 important consideration is the use of point of  
15 operation safeguarding," do you see that?

16 A. Yes.

17 Q. Is that an accurate statement?

18 A. It is.

19 Q. Would Avco Lycoming be in the best  
20 position to know which point of operation  
21 safeguarding was in use?

22 A. For each one of the operations that  
23 they are doing, yes.

24 Q. You have written on that issue quite

1 frequently, indicated that it is the employer's  
2 responsibility to choose the appropriate point  
3 of operation safety devices; isn't that correct?

4 A. Yes, I am an authority on that.

5 Q. Okay, which I have noticed. And you  
6 have also defended manufacturers of press brakes  
7 indicating that they would not be in a position  
8 to choose the appropriate point of operation  
9 safety device?

10 A. That's correct.

11 Q. So with this factor it would be the end  
12 user, Avco Lycoming to be in the best position  
13 or even Corry Manufacturing after they purchased  
14 it in 1999 I believe?

15 A. Yes.

16 Q. Okay. And then it goes on to say that  
17 technology transfer. What does that mean?  
18 That's another important factor.

19 A. It has to do with the training of your  
20 people.

21 Q. And that would be something that only  
22 Avco Lycoming would know with regard to this  
23 particular press brake; is that right?

24 A. Yes.

1 Q. Do you have any information or evidence  
2 to suggest that Heim knew of the training  
3 technology transfer category that existed during  
4 the sale of this press brake?

5 A. Well, if it is a general purpose  
6 machine, they know the range of the technology  
7 transfer. They won't know specifically from job  
8 to job who has been assigned to it.

9 Q. Which is significant, isn't it, in  
10 choosing an appropriate foot control knowing the  
11 specifics?

12 A. No.

13 Q. That's not important at all?

14 A. No, no, no, it is the -- it is  
15 important that you know that you are selecting a  
16 footswitch for a press brake, that's No. 1, and,  
17 2, a general purpose press brake, No. 2.

18 Q. I thought you said it was important to  
19 know about the use of the particular machine.  
20 For instance, if you had a press brake that was  
21 used more along the lines of a power press such  
22 that there was a repetitive use of the machine?

23 A. That's -- you know, what's happened is  
24 that is -- that is not a general purpose use of

1 a press brake. People who have a punch press  
2 operation will normally use a punch press.

3 Q. I know what you are saying normally. I  
4 am not talking about the normal situation  
5 because we don't know what that is related to  
6 this.

7 A. Yes, but I do know the normal  
8 situation. I hold Heim responsible or any  
9 manufacturer of press brake responsible for  
10 sending out a -- controls that are for the  
11 general purpose use of the machine.

12 That doesn't mean you can't cook up  
13 something special that no one has ever heard  
14 about before, but there is a general purpose use  
15 of this machine and that's what you have to  
16 supply.

17 And, remember, here is an article on --  
18 that gives you information to help you make  
19 selections. But this could be used for a  
20 thousand different kinds of machines.

21 And what I asked for in No. 9 is that  
22 when you select the foot control as a  
23 manufacturer of the machine, that you know what  
24 kind of machine you have got.

1           Is this a welding machine? Is this a  
2   sewing machine? Is it an overhead pin router?  
3   What kind of machine have you got? And they  
4   know what they are sending out, a press brake.

5           And a 6-foot press brake is normally  
6   operated with only one person so they don't have  
7   to put dual controls on, so they know that, and  
8   they know it is a general purpose press brake,  
9   so they know that. And to the extent that they  
10   can send out proper footswitches which is  
11   relatively easy to do, they now know how to make  
12   a selection.

13          Q. If we look at the last item on here you  
14   indicate another important factor consideration  
15   in the proper selection of foot control is the  
16   various anticipated uses of the foot control on  
17   multimode machinery, that would be something  
18   Avco Lycoming or the end user would know; right?

19          A. That's right.

20          Q. Do you have any information that Heim  
21   would know what -- the various anticipated uses  
22   of the foot control?

23          A. Sure they do because they are sending  
24   out a general purpose machine, so they have to

1 assume that this thing is going to see a huge  
2 variety of things that they are working on.

3 Q. Who would be in your opinion,  
4 Professor, who would be in a better position to  
5 know the various anticipated uses of the foot  
6 control on multimode machinery, the press brake  
7 manufacturer or the end user?

8 A. Oh, the press brake manufacturer. This  
9 press brake has been sold to many different  
10 people, and Heim is in a better position to  
11 understand that than any one person who buys it.

12 Q. Have you ever testified --

13 THE VIDEOGRAPHER: Mr. Robinson.

14 MR. ROBINSON: Oh, I am sorry.

15 THE VIDEOGRAPHER: We are off the record at  
16 2:13 p.m.

17 (Recess taken.)

18 THE VIDEOGRAPHER: This is the beginning of  
19 Tape No. 2. Back on the record at 2:16 p.m.

20 BY MR. ROBINSON:

21 Q. Have you ever testified that the end  
22 user would be in the best position to know  
23 the -- I will quote, "the various anticipated  
24 uses of the foot control on multimode



1 machinery"?

2 A. Absolutely. And this is why it is so  
3 important on point of operation devices. And  
4 there is more to it than that, but it is because  
5 there doesn't exist a single general purpose  
6 safety device, you know, for a machine and every  
7 one of the devices is a Type 4, Type 5. That  
8 means they can -- the wrong safety device can  
9 hurt you.

10 Q. I am referring to your reference in the  
11 foot control section of your --

12 A. Right, right.

13 Q. Okay, so you have testified to that,  
14 that the end user is in the best possible  
15 situation to know -- to make a determination for  
16 the proper selection of a foot control when  
17 determining the -- and addressing the various  
18 anticipated uses of the foot control on  
19 multimode machinery?

20 A. On a general purpose machine, that's  
21 correct.

22 Q. Under lift gate, that's No. 4, do you  
23 see that?

24 A. Yes.

1 Q. Did you indicate in here that striking  
2 the ski nose hard with a flat toe shoe will  
3 almost always defeat the liftable gate and allow  
4 a one motion activation?

5 A. Yes. The emphasis is on the word  
6 "hard."

7 Q. I am just asking did you include that  
8 sentence?

9 A. I did.

10 Q. And a hard -- a hard strike will almost  
11 always defeat the lift gate?

12 A. Yes. And then the last one contains a  
13 similar observation.

14 Q. Where? Where it says as a practical  
15 matter?

16 A. Yes.

17 Q. The ski nose enabled the process to be  
18 accomplished using a single forceful motion?

19 A. Yes. This is not speculation. I  
20 watched my students doing this.

21 Q. Should this machine, this press brake  
22 as it was used by Corry have been equipped with  
23 a point of operation safety device?

24 A. When it was sent out from Heim?

1 Q. No, sir. Well, sure, yes. I think I  
2 know your answer to that.

3 A. When it was sent out to Heim, the  
4 answer is no.

5 Q. Should it have had one at the time of  
6 the incident?

7 A. Yes.

8 Q. Would it be a misuse of the machine not  
9 to have a point of operation safety device?

10 A. It depends on the circumstances because  
11 there are some operations on a press brake where  
12 you can't use any point of operation.

13 Q. I am referring to the one that Tina  
14 Lindquist was using, would it be a misuse of  
15 that press brake to use it as Tina Lindquist was  
16 using it without a point of operation safety  
17 device?

18 A. Based on the information that I have at  
19 my disposal, I think it is a misuse of the  
20 machine not to have a point of operation safety  
21 device.

22 Q. And regardless of the type of foot  
23 control that was in -- that was used, if the  
24 machine -- if the press brake had a point of

1 operation safety device, this accident could not  
2 have happened; is that accurate?

3 A. If the -- if I have the full  
4 understanding of how this accident happened,  
5 what was --

6 Q. Sure.

7 A. -- being done, then there is a point of  
8 operation device that could have prevented this  
9 accident.

10 Q. Do you consider a two-palm switch -- by  
11 the way, do you refer to them as two-palm  
12 switches?

13 A. Yes.

14 Q. Do you refer to a two-palm switch as  
15 being a point of operation safety device?

16 A. What I do is I -- you know, it is a  
17 hostage control, and it can be used as a -- as a  
18 safety device. And it has got -- you need to do  
19 a few things to make it, you know, to make it  
20 work, but it is -- you know, if the machine has  
21 got the right circuitry and it is located far  
22 enough from the machine, then releasing either  
23 one of the buttons while it is exercising the  
24 dangerous part of the stroke will freeze it and

1 you can't have the accident.

2 Q. Did you know that this press brake,  
3 that Corry had installed a two-palm button  
4 switch on Heim press brake?

5 A. Yes, and I examined that control.

6 Q. Would the use of that control have  
7 prevented this accident?

8 A. I think so if it was located far enough  
9 from the machine, not super far but --

10 Q. Because it would have precluded her  
11 hands from being in the ram area and would have  
12 required her hands to be on the buttons I take  
13 it is how that works; is that right?

14 A. That's right. I am now -- you know,  
15 the -- the way she has described it. That  
16 doesn't mean a third-party can't do something.  
17 You know, there is other scenarios.

18 Q. Sure. And I am referring to  
19 specifically the manner in which she was  
20 injured.

21 A. Right.

22 Q. The use of that two-palm button switch  
23 would have prevented that?

24 A. I think so.

1 Q. Did you know that the -- that Corry  
2 installed a light curtain on the press brake  
3 after the accident?

4 A. Yes.

5 Q. It is actually shown in the 29, 30  
6 photographs of Exhibit B?

7 A. Yes.

8 Q. And did you know that they continued to  
9 perform this particular part process that Tina  
10 Lindquist was using at the time of her injury  
11 with the use of that light curtain?

12 A. Right.

13 Q. And do you consider -- do you call them  
14 a light curtain?

15 A. Yeah, I do.

16 Q. And is a light curtain a point of  
17 operation safety device?

18 A. Yes.

19 Q. Would the use of that light curtain  
20 have prevented Tina Lindquist's injury?

21 A. With the same proviso, if it is set up  
22 properly --

23 Q. Sure.

24 A. -- then it will do the job.

1 Q. And they set it up properly after the  
2 accident; didn't they?

3 A. I don't know whether they set it up  
4 properly, but they -- that light curtain that I  
5 saw can be set up properly so that you won't  
6 have the accident.

7 They need to do a lot of things. You  
8 have got to make sure just like with the  
9 two-hand controls and the light curtain, you  
10 have to make sure that the Heim press follows  
11 orders so that when you tell it to stop, it, in  
12 fact, will freeze the ram, you know, without too  
13 much drift. And so if you can do that, then  
14 this will -- this can become a component of a  
15 proper two-hand control which could have  
16 prevented the accident.

17 Q. If -- if there was an ungated foot  
18 control on this press brake with appropriate  
19 point of operation safety device, a light  
20 curtain and a -- the use of a two -- strike  
21 that.

22 If there was an appropriate point of  
23 operation safety device and there was an ungated  
24 foot control being used on this Heim press brake

1 being used by Tina Lindquist, would you still  
2 consider the foot control to be defective?

3 A. Oh, certainly, but that doesn't mean  
4 that you will have an accident.

5 Q. Is it your opinion that an ungated foot  
6 control is defective when in use on any press  
7 brake?

8 A. I can't tell you any press brake, but  
9 the -- and I don't think I only want to talk  
10 about the business of the gating because I want  
11 to talk about specifically the Linemaster with  
12 the locking plate and the front gate, the --  
13 that or something equivalent should be on every  
14 single press brake, the -- that's a general  
15 purpose press brake.

16 Q. I know. This case here concerns you  
17 have indicated this one had a locking plate, so  
18 that's not an issue for your testimony. And now  
19 we are talking about the only opinion you have  
20 expressed today being that you think it is  
21 defective because it didn't have a gate. So I  
22 need to focus on that.

23 A. Yeah, but what my problem is -- it is  
24 not much of a problem, but when you only talk



1 about the gate, it makes it sound like if all  
2 you had was a gate I am going to be happy. And  
3 I am not going to be happy if all you have is a  
4 gate.

5 Q. And what is it that you want to be  
6 happy?

7 A. I want to have the locking plate --

8 Q. Okay.

9 A. -- and the gate.

10 Q. Okay.

11 A. So -- and that's what I want on it.

12 Q. Well, you have indicated there is a  
13 locking plate on this.

14 A. There is.

15 Q. So the only thing for this case you  
16 wanted was a gate?

17 A. Right.

18 Q. Okay. So --

19 A. Remember, I am going to have -- if I  
20 live long enough, there will be a lot of people  
21 looking at this record and I don't want them  
22 misreading the record of saying, gee, you said  
23 this thing here and then I have to explain to  
24 them it was implicit that I had the locking

1 plate.

2 I want it to be made clear that in this  
3 particular case because it already has the  
4 locking plate I want the addition of this gate.

5 Q. And what if it did not have the locking  
6 plate, would you --

7 A. Then I am not as happy with the thing  
8 because there are too many applications where  
9 you can ride the pedal and this thing won't --  
10 prevents you from riding the pedal.

11 Q. So would it be safe to say then that if  
12 the foot control did not have a locking plate,  
13 you would -- you would consider -- well, you  
14 don't like to use the word "safe" so let me do  
15 it the other way.

16 Is it your opinion then if the foot  
17 control did not have a locking gate, that  
18 it would -- a locking plate, that you would not  
19 require it to have a gate?

20 A. The -- no, no, I don't think I would  
21 say it that way. The gate helps, but the  
22 locking plate and the gate really moves in the  
23 spirit of the industry that wants you to inhibit  
24 accidental activation.

1 Q. I think you addressed this issue. If  
2 the foot control did not have a locking plate,  
3 would you consider it defective without a gate?  
4 I thought you just said, no, you wouldn't?

5 MR. HARTMAN: He didn't say that.

6 THE WITNESS: I am confused.

7 BY MR. ROBINSON:

8 Q. Remove the locking plate from the foot  
9 control.

10 A. Then I would not consider this to be an  
11 effective system.

12 Q. My question is would you consider it to  
13 be defective without a gate if it did not have  
14 that locking plate?

15 A. Yes, I would.

16 Q. Okay, I think it is now said two  
17 different ways so we have to make sure it is  
18 clear.

19 MR. HARTMAN: Wait, I am going to object  
20 because you are -- you keep characterizing this  
21 witness' testimony and he has been absolutely  
22 clear. And if you want to review the record, he  
23 has answered this multiple times. You might not  
24 like the answer, but he has specifically

1 indicated that --

2 MR. ROBINSON: You don't need to repeat  
3 testimony, Mr. Hartman.

4 MR. HARTMAN: Well, then, listen, I am not  
5 going to let you keep asking the same question  
6 over and over again. And your question, you  
7 keep doing it and you keep trying to  
8 mischaracterize what this witness has said, so  
9 either --

10 MR. ROBINSON: Your self-serving comments  
11 are totally inappropriate.

12 MR. HARTMAN: So either I am going to -- I  
13 am either going to state what he said or I am  
14 going to ask you to review the transcript to see  
15 what he said, or if you are not willing to be  
16 satisfied with either of them, we are not going  
17 to answer the same question again.

18 MR. ROBINSON: You don't have the ability to  
19 tell this witness not to answer the questions.

20 MR. HARTMAN: This is ridiculous, Paul, the  
21 way you are handling this.

22 MR. ROBINSON: Make your snide comments, you  
23 have repeatedly done it.

24 MR. HARTMAN: It is clear --

1 MR. ROBINSON: Please let me -- please let  
2 me move on here.

3 BY MR. ROBINSON:

4 Q. I want you to assume that the foot  
5 control that Tina Lindquist was using did not  
6 contain a locking plate.

7 A. All right.

8 Q. And you are the expert looking at that  
9 foot control, and that foot control does not  
10 have a gate, everything else is the same.

11 A. Okay.

12 Q. Is the foot control defective?

13 A. Yes.

14 Q. And why is it defective?

15 A. Because it does not properly inhibit  
16 accidental activation.

17 Q. What do you mean by that?

18 A. Well, the standards in the industry use  
19 the word "inhibit." You see, if it was a -- if  
20 it was a foot pedal, they are really strong on  
21 the thing and they will not allow you to have  
22 any chance of accidentally activating this  
23 machine.

24 But knowing how dreadful foot controls

1 are, they have -- they recognize that they are  
2 really tough once you have made the decision to  
3 use a foot control to regain the -- you know,  
4 the traditional safety, so they use the word  
5 "inhibit." And by inhibit that's another word  
6 to minimize the probability of accidental  
7 activation.

8 Q. Okay, so just so I understand your  
9 opinion, if the foot control that she was using  
10 either did or did not have a locking plate  
11 without a gate, your opinion is it would be  
12 defective?

13 A. Right.

14 Q. Okay. Have you ever testified to the  
15 contrary, that it would not be defective?

16 A. On a press brake?

17 Q. On a press brake or a power press.

18 A. Well --

19 Q. I am just asking that question.

20 A. Well, the -- I have no idea because I  
21 am prepared to talk about press brakes. The  
22 power press is a completely different animal  
23 than the press brake.

24 Q. Have you ever testified that an ungated